

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 APR -9 PM 12:32

IN THE MATTER OF:)

Summer Night Oil Company, LLC)

Respondent.)
_____)

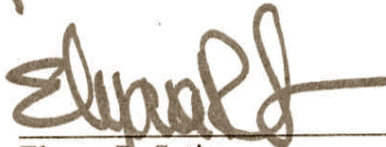
EPA REGION VIII
HEARING CLERK
Docket No. SDWA-08-2006-0047

Proceedings Under Section
1423(c) of the Safe Drinking
Water Act, 42 U.S.C. 300h-2(c)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED This 6th Day of April, 2007.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 APR -2 PM 1:03

Docket No. SDWA-08-2006-0047

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Summer Night Oil Company, LLC,) FIRST AMENDED CONSENT AGREEMENT
Respondent.)

To clarify the requirements for termination of their Consent Agreement, the parties hereby execute this First Amended Consent Agreement.

Pursuant to 40 C.F.R. sec. 22.18(b), Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Summer Night Oil Company, LLC, by their undersigned representatives, hereby consent and agree as follows:

1. On July 14, 2006, Complainant issued its First Amended Complaint ("Complaint") alleging violations of its underground injection control ("UIC") permit number MT20956-06196 ("permit") and the Safe Drinking Water Act ("the Act"), 42 U.S.C. sec. 300f, et seq. The alleged violations include failure to demonstrate Part II (external) mechanical integrity and report the result to EPA, failure to conduct a step rate test and report the test results to EPA, and failure to submit a timely and complete annual report.

2. Based on additional information provided after the issuance of the Complaint, Complainant withdraws Count 3 (exceeding the maximum allowable injection pressure). For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations contained in the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees to pay a civil penalty in the amount **\$14,468** (fourteen thousand four hundred sixty-eight U.S. dollars) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68010727

A copy of the check shall be sent simultaneously to:

Nathan Wiser
Environmental Scientist
Technical Enforcement Program (8ENF-UFO)
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. The penalty amount in this settlement is predicated in large part on Respondent's assertion that it meets the UIC program's Small Business penalty reduction requirements. Respondent's accountant has certified that based on the information provided by Respondent, Respondent's net annual sales did not exceed one million dollars for each year from 2003 through 2006. Respondent's accountant is revising all Respondent's tax returns for 2003, 2004, and 2005, and is still processing Respondent's tax return for 2006. Respondent agrees to provide EPA with signed copies of its final filed tax returns for 2003 through 2005 no later than April 20, 2007, and for 2006 no later than August 31, 2007. EPA agrees to return the copies of Respondent's tax returns with its written determination that all the terms of this Consent Agreement have been satisfied (see paragraph 15). If any of those tax returns show Respondent's net annual sales in excess of one million dollars or if Respondent fails to submit all the final tax returns by April 20, 2007 (August 31, 2007 for the 2006 tax return), Respondent agrees that it is not entitled to the small business penalty reduction, and therefore agrees to pay an additional \$18,375 (eighteen thousand three hundred seventy-five U.S. dollars) no later than May 21, 2007 (September 20, 2007 for the 2006 tax return) in the same manner as described in paragraph 5 above.

7. The parties had planned that Respondent would be in compliance with its UIC permit in advance of filing this Consent Agreement. Respondent performed a temperature log in the injection well during the span from January 22 to January 26, 2007 and commenced but then aborted a step rate test on January 29, 2007. In the course of performing the temperature log, Respondent's contractor temporarily directed injection into the well's annulus (instead of injection tubing) causing the well to lose its mechanical integrity. Respondent states that it is

using its best efforts to locate an available workover rig to repair the well and allow for the well's mechanical integrity demonstration and step rate testing. Respondent agrees that it will not inject into the well -- except as necessary to conduct the required step rate test and to repeat the temperature log -- until it has complied with its permit's requirements and 40 C.F.R. §146.8 for establishing mechanical integrity and has received EPA's written authorization for injection. Respondent agrees it will conduct the step rate test and temperature logs and deliver the test results and an analysis by a knowledgeable analyst to EPA no later than November 30, 2007.

8. Respondent may obviate the need for complying with the requirements of paragraph 7 by returning the well to compliance by plugging the well in accordance with the approved plugging and abandonment procedures of the permit no later than November 30, 2007.

9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with its UIC permit, the UIC regulations, and the Act.

10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

11. Nothing in this Consent Agreement shall be construed as a waiver by the EPA (or any other federal entity) of its authority to seek costs or any appropriate relief associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

12. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

13. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

14. Each party shall bear its own costs and attorney fees in connection with this matter.

15. The Consent Agreement shall terminate upon Respondent's receipt of EPA's written determination that all the terms of this agreement have been satisfied.

16. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 3/30/07

By: Michael T. Sierra
Eddie Sierra
Acting Assistant Regional Administrator
Office of Enforcement Compliance and
Environmental Justice

Date:

5-29-07

By:


Thomas E. Sitz
Enforcement Attorney

SUMMER NIGHT OIL COMPANY, LLC,
Respondent.

Date:

March 29, 07

By:


Marla Sue Gordon, Member

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. SDWA-08-2006-0047

In the Matter of:

Summer Night Oil Company, LLC,
Respondent.

)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. section 22.18, the First Amended Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order, Respondent is hereby **ORDERED** to comply with all the terms of the Consent Agreement, effective immediately upon Respondent's receipt of this Consent Agreement and Final Order.

SO ORDERED THIS _____ DAY OF _____, 2007.

Elyana R. Sutin
Regional Judicial officer

IN THE MATTER OF: Summer Night Oil Company, LLC
DOCKET NUMBER: SDWA-08-2006-0047

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the First Amended Consent Agreement and Proposed Order were hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

a true copy was hand-carried to:

Elyana R. Sutin
Regional Judicial Officer (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a true copy was sent via first class mail to:

Marla Sue Gordon, Member
Summer Night Oil Company, LLC
1645 Court Place
Suite 322
Denver, CO 80202

Date: 4/2/07

By: Judith McTernan
Judith McTernan

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 MAR 16 AM 11:45
REGION 8

Docket No. SDWA-08-2006-0047

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Summer Night Oil Company, LLC,) CONSENT AGREEMENT
Respondent.)

Pursuant to 40 C.F.R. sec. 22.18(b), Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Summer Night Oil Company, LLC, by their undersigned representatives, hereby consent and agree as follows:

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3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns.

Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

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Pittsburgh, PA 15251-6859

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Mellon Client Service Center Rm 154-0670
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Pittsburgh, PA 15251-6859

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TREAS NYC/CTR/
BNF=/AC-68010727

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Environmental Scientist
Technical Enforcement Program (8ENF-UFO)
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

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UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 3/16/07

By: Michael T. Bisher
for Eddie Sierra
Acting Assistant Regional Administrator
Office of Enforcement Compliance and
Environmental Justice

Date: 3-14-2007

By: T. Sitz
Thomas E. Sitz
Enforcement Attorney

SUMMER NIGHT OIL COMPANY, LLC,
Respondent.

Date: March 14, 2007

By: Marla Sue Gordon
Marla Sue Gordon
Title: Member

IN THE MATTER OF: Summer Night Oil Company, LLC
DOCKET NUMBER: SDWA-08-2006-0047

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the Consent Agreement were hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

a true copy was hand-carried to:

Elyana R. Sutin
Regional Judicial Officer (8RC)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a true copy was sent via first class mail to:

Marla Sue Gordon, Member
Summer Night Oil Company, LLC
1645 Court Place
Suite 322
Denver, CO 80202

Date: March 16, 2007

By: Stephanie Gordon
Stephanie Gordon